

IN THE  
Supreme Court of the United States

JAKE GREGORY,  
*Petitioner,*  
v.  
JULIAN C. LEE,  
*Respondent.*

On Petition for a Writ of Certiorari  
to the United States Court of Appeals  
for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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### QUESTION PRESENTED

Petitioner, FBI Special Agent Jake Gregory, allegedly caused respondent's arrest pursuant to a Florida warrant issued under a name respondent was using. Addressing Agent Gregory's claim of qualified immunity, the Ninth Circuit did not identify disputes about the objective, historical information before Agent Gregory (what Gregory observed, saw, and heard) at the time he acted. Nor did it address whether that information, objectively assessed through the eyes of a competent officer, could reasonably have been thought sufficient to justify arrest. Instead, it denied qualified immunity because respondent alleged that Gregory, based on that information, "knew" respondent was innocent and that the warrant was for (or should have been for) respondent's brother. The question presented is:

Whether the lawfulness of a seizure under the Fourth Amendment, and the availability of qualified immunity, may turn on allegations that the officer subjectively inferred from the information before him—and thus "knew"—that the arrestee was innocent, without regard to whether, objectively assessed, the information supported probable cause or a reasonably competent officer could have so concluded.

**PARTIES TO THE PROCEEDINGS BELOW**

Petitioner Jake Gregory was appellant in the court of appeals and a defendant in the district court. Respondent Julian C. Lee was appellee in the court of appeals and plaintiff in the district court. The United States of America and the Federal Bureau of Investigation were defendants in the district court.

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**PETITION FOR A WRIT OF CERTIORARI**

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Federal Bureau of Investigation Special Agent Jake Gregory respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

**OPINIONS BELOW**

The court of appeals' opinion (App., *infra*, 1a-10a) is reported at 363 F.3d 931 (9th Cir. 2004). The district court's opinions (App., *infra*, 11a-28a, 29a-50a) are unreported.

**JURISDICTION**

The court of appeals entered judgment on April 7, 2004, and denied a petition for rehearing on April 15, 2005 (App., *infra*, 51a). On July 6, 2005, Justice O'Connor extended the time for filing a petition for a writ of certiorari to and including August 13, 2005. On August 4, 2005, Justice O'Connor further extended the time to and including September 12, 2005. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL PROVISIONS INVOLVED

Relevant provisions of the United States Constitution are set forth in the Appendix at App., *infra*, 53a.

## STATEMENT OF THE CASE

This case concerns whether a law enforcement officer's right to qualified immunity in a Fourth Amendment case depends on his state of mind. In the decision below, the Ninth Circuit denied qualified immunity because of a dispute over whether the government official had actually *concluded* or *inferred*—and thus “knew”—that respondent was innocent when he caused respondent's arrest, without regard to whether the official's undisputed observations (what he saw, read, and heard) otherwise supported probable cause. That holding squarely conflicts with decisions of the First Circuit and improperly injects into Fourth Amendment and qualified immunity determinations precisely the subjective inquiry into mental states that this Court excised long ago.

1. Petitioner Special Agent Jake Gregory is a 15-year veteran of the FBI. In 1999, he was assigned to interview respondent Julian Christopher Lee as part of a nationwide effort to locate respondent's brother, fugitive Robert Q. Lee. App., *infra*, 1a, 3a; C.A. E.R. 259. After determining that respondent used the name “Christopher Lee” and that a “Christopher Lee” was residing in Encinitas, California, Agent Gregory located and visited respondent's residence on April 21, 2000. App., *infra*, 4a; C.A. E.R. 79. Respondent was not home. Agent Gregory left his business card with a request that “Christopher Lee” call him. App., *infra*, 4a; C.A. E.R. 68, 260. Respondent called later that day and asked whether he was legally required to speak with Agent Gregory. Gregory told respondent that he was not required to talk. At that point, respondent angrily told Agent Gregory to stop harassing him, used profanity, and abruptly hung up. App., *infra*, 4a; C.A. E.R. 260.

His suspicions aroused by respondent's hostility, Agent Gregory recalled materials indicating that there was an outstanding Florida warrant for "Christopher Lee," the name that respondent "Julian Christopher Lee" was using. C.A. E.R. 79, 260. Agent Gregory obtained a copy of the warrant, which was dated December 4, 1998. The warrant sought the arrest of a "Christopher Lee" on aggravated battery and burglary charges in Dade County, Florida. C.A. E.R. 75. The Social Security number, date of birth, race, and gender listed on the warrant were all exact matches for respondent. App., *infra*, 4a.

At the same time, FBI records indicated that respondent's brother, Robert Lee, might have used "Christopher Lee" as an alias. A July 1999 FBI bulletin included "Christopher Lee" in a list of five names and corresponding Social Security numbers used "at various locations \* \* \* in different parts of the country by various individuals," adding that "it is not known if" Robert Lee "is one of these individuals." C.A. E.R. 71; see App., *infra*, 3a. In addition, a February 7, 1997, letter from a New Jersey state prosecutor's office stated that Robert Q. Lee might be in Alabama using the name "Christopher Lee" and a March 7, 1967, birth date—respondent's birth date. App., *infra*, 3a; C.A. E.R. 84.

In addition, the warrant's description of Christopher Lee did not match respondent perfectly. For example, the warrant listed Christopher Lee's height as 6' 1", while respondent's California driver's license listed his height as 6' 3". App., *infra*, 3a; C.A. E.R. 64, 83, 89. The warrant description did not match respondent's brother in that respect either, since respondent's brother was only 6' tall. C.A. E.R. 85. The weight differences were greater. The Florida warrant listed Christopher Lee's weight as 200 pounds, 70 pounds less than the weight listed on respondent's driver's license. App., *infra*, 4a; C.A. E.R. 83, 89. At the same time, that 200-pound weight was significantly more than the 160-